

(Income Tax Regulations) for provisions relating to declaratory judgments, for provisions relating to the qualification of an employee as an “interested party”, and for a requirement that the applicant for an advance determination by the Internal Revenue Service of the qualification of certain retirement plans give notice of such application to interested parties.

[T.D. 7421, 41 FR 20878, May 21, 1976]

§ 301.7477-1 Declaratory judgments relating to transfers of property from the United States.

(a) *Petition—(1) General rule.* A transferor or transferee of stock, securities of property transferred in an exchange described in section 367(a)(1) may petition the Tax Court for a declaratory judgment with respect to the exchange if—

- (i) The pleading is timely filed; and
- (ii) The exchange has begun before the pleading is filed.

(2) *Pleading timely filed.* The pleading is timely filed if it is filed before the 92d day after the day on which notice of the determination of the Commissioner is sent to the petitioner by certified or registered mail. In the absence of such notice, neither section 7477 nor this section imposes any time limit on the filing of the pleading.

(3) *Beginning of exchange.* An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

A transfer shall not be considered to begin with a decision of a board of directors or similar action. A transfer shall be deemed to have begun even though it is made subject to a condition that, if there is a failure to obtain a determination that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, the transaction will not be consummated and to the extent possible the assets transferred will be returned.

(b) *Judgment—(1) General rule.* The Tax Court may issue a declaratory judgment or decree within the scope described in section 7477(a)(2) if—

(i) There is a case of actual controversy, and

(ii) The petitioner has exhausted the administrative remedies available to it within the Internal Revenue Service, with respect to a determination or a failure to make a determination.

(2) *Exhaustion of administrative remedies.* The petitioner shall be deemed to have exhausted the administrative remedies available to it within the Internal Revenue Service if—

(i) The petitioner has completed all applicable procedures published in regulations, the statement of procedural rules (26 CFR part 601) or revenue procedures relating to the filing of a request for a ruling under section 367(a)(1) and, if such a ruling has been issued, to the filing of a protest to such a ruling;

(ii) The petitioner has submitted prompt and complete responses to any requests by the Internal Revenue Service for further information; and

(iii) The Internal Revenue Service has had a reasonable time to act upon the request for the ruling, any protest thereto and any additional information submitted in response to any request made therefor by the Internal Revenue Service. If there has been a failure to make a determination, the Internal Revenue Service shall be deemed not to have had a reasonable time to act before the expiration of 270 days after the day on which petitioner properly filed the request for a ruling. In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

(3) *Effect of judgment.* The declaratory judgment or decree of the Tax Court, when final under section 7481, shall be binding on the parties to the case for purposes of section 367(a)(1). However, if the facts of the exchange differ from those presented to the Court, the judgment shall be binding only to the extent appropriate under the legal doctrines of estoppel and stare decisis.

(c) *Definitions—(1) Exchange described to section 367(a)(1).* For purposes of this

section, an “exchange described in section 367(a)(1)” is an exchange in connection with which the petitioner has filed a ruling request pursuant to section 367(a)(1) and the regulations thereunder without regard to whether or not section 332, 351, 354, 355, 356 or 361 applies to the exchange.

(2) *Determination.* For purposes of this section, a “determination” is the Commissioner’s determination for purposes of section 367(a)(1), made in response to the petitioner’s protest to a ruling issued under section 367(a)(1)—

(i) That an exchange described in section 367(a)(1) is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or

(ii) Of the terms and conditions pursuant to which such an exchange will be determined not to be in pursuance of such a plan.

(d) *Effective date.* The provisions of this section shall apply with respect to pleadings filed after October 4, 1976, but only with respect to exchanges beginning after October 9, 1975.

(Approved by the Office of Management and Budget under control number 1545-0719)

(Sec. 367(a)(1), 90 Stat. 1634, 26 U.S.C. 367(a)(1) and 7805, 68A Stat. 917, 26 U.S.C. 7805, Internal Revenue Code of 1954)

[T.D. 7596, 44 FR 10707, Feb. 23, 1979, as amended by T.D. 7954, 49 FR 19466, May 8, 1984]

COURT REVIEW OF TAX COURT DECISIONS

§ 301.7481-1 Date when Tax Court decision becomes final; decision modified or reversed.

(a) *Upon mandate of Supreme Court.* Under section 7481(3)(A) of the Code, if the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(b) *Upon mandate of the Court of Appeals.* Under section 7481(3)(B) of the Code, if the decision of the Tax Court is modified or reversed by the U.S. Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the U.S. Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

§ 301.7482-1 Courts of review; venue.

Under section 7482(b)(2) of the Code, decisions of the Tax Court may be reviewed by any U.S. Court of Appeals which may be designated by the Commissioner and the taxpayer by stipulation in writing.

§ 301.7483-1 Petition for review.

The decision of the Tax Court may be reviewed by a U.S. Court of Appeals as provided in section 7482 of the Code if a petition for such review is filed by either the Commissioner or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7484-1 Change of incumbent in office.

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.